



Data Code: AP.PRE.REQ

PTO/SB/33 (07-05)

Approved for use through xx/xx/200x. OMB 0651-00xx

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]

on September 16, 2005

Signature _____

Typed or printed name Traci A. Brown

Application Number

10/051,558

Filed

January 17, 2002

First Named Inventor

John R. Hind

Art Unit

2175

Examiner

Yicun Wu

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)☒ attorney or agent of record.
Registration number 42,011☐ attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____

Signature

D. Scott Moore

Typed or printed name

919-854-1400

Telephone number

September 16, 2005

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☒ *Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



**RESPONSE UNDER 37 C.F.R. 1.116
EXPEDITED PROCEDURE EXAMINING GROUP 2165**

Attorney's Docket No. 5577-327/RSW920010101US1

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Hind

Serial No.: 10/051,558

Filed: January 17, 2002

For: SYSTEM AND METHOD FOR MANAGING AND SECURING META DATA

Examiner: Yicun Wu

Group Art Unit: 2175

Confirmation No.: 9629

Date: September 16, 2005

Mail Stop AF

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Certificate of Mailing under 37 CFR § 1.8

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on September 16, 2005.

Traci A. Brown
Traci A. Brown

**REASONS IN SUPPORT OF APPLICANT'S PRE-APPEAL
BRIEF REQUEST FOR REVIEW AND INTERVIEW SUMMARY**

Sir:

This document is submitted in support of the Pre-Appeal Brief Request for Review filed concurrently with a Notice of Appeal in compliance with 37 C.F.R. 41.31 and with the rules set out in the OG of July 12, 2005 for the New Appeal Brief Conference Pilot Program.

No fee or extension of time is believed due for this request. However, if any fee or extension of time for this request is required, Applicants request that this be considered a petition therefor. The Commissioner is hereby authorized to charge any additional fee, which may be required, or credit any refund, to our Deposit Account No. 09-0461.

REMARKS

Applicant hereby requests a Pre-Appeal Brief Review (hereinafter "Request") of the claims finally rejected in the Final Office Action mailed May 16, 2005 (hereinafter "Final Action"). The Request is provided herewith in accordance with the rules set out in the OG dated July 12, 2005.

As a preliminary matter, Applicant wishes to thank Examiner Yicun Wu for his willingness to discuss the pending claims and prior prosecution with Applicant's representative D. Scott Moore (Reg. No. 42,011) on September 8, 2005. During the interview, no agreement was reached as to the patentability of the pending claims. Applicant respectfully requests that the present remarks constitute an Interview Summary pursuant to MPEP §713.04.

Claims 1-7, 9-18, 22-28, 30-40, 44-49 and 51-55 stand rejected under 35 U.S.C. § 103 as obvious in light of United States Patent No. 6,651,217 to Kennedy *et al.* (hereinafter "Kennedy") and United States Patent No. 6,539,375 to Kawasaki (hereinafter "Kawasaki"). Claims 8, 19-21, 29, 41-43 and 50 stand rejected under 35 U.S.C. § 103 as obvious in light of Kennedy in view of Kawasaki and further in view of United States Patent No. 6,460,141 to Olden (hereinafter "Olden").

Applicant respectfully submits that many of the recitations of the pending claims are not met by the cited combinations for at least the reasons discussed herein and in Applicant's previously filed Amendment of January 4, 2005. Therefore, Applicant respectfully requests review of the present application by an appeal conference prior to the filing of an appeal brief. In the interest of brevity and without waiving the right to argue additional grounds should this Petition be denied, Applicant will only discuss the recitations of independent Claims 1, 22 and 44.

Claim 1 recites, in part:

...
collecting meta data resulting from use of the computing device, the meta data comprising application data usable in an application and context data for identifying context in which the application data are used;
determining statistical information associated with the meta data, the statistical information indicating relationships between the meta data;
storing the meta data and the statistical information in a storage of the computing device; and
retrieving, from the storage, application data that would be most appropriate for a current context of using the application based on the context data and the statistical information. (Emphasis added).

Claims 22 and 44 are computer program product and system claims, respectively, that include similar recitations. Applicant respectfully submits that at least the highlighted recitations of Claim 1 are neither disclosed nor suggested by the cited combination.

The Final Action cites to col. 5, lines 30-34 and Fig. 5 of Kennedy (Final Action, page 3) as disclosing "retrieving, from the storage, application data that would be most appropriate for a current context of using the application based on the context data and the statistical information" as recited in Claim 1. However, these portions of Kennedy merely describe two different web pages with different URLs and a prompt screen for a user to enter data that will be used to fill out forms. Applicant submits that these portions of Kennedy do not disclose or suggest retrieving application data based on statistical information as recited in Claim 1.

With regard to "determining statistical information associated with the meta data, the statistical information indicating relationships between the meta data" as recited in Claim 1, the cited portion of Kawasaki (col. 3, lines 4-16) does not disclose or suggest determining statistical data based on application data and context data (i.e. the meta data) as recited in Claim 1. The cited portion of Kawasaki appears to describe the profiling of a user based on the user's use of the Internet and the content accessed and is not statistical analysis of meta data as recited in Claim 1. Applicant submits that merely because Kawasaki may use some statistical analysis does not disclose or suggest determining statistical information indicating relationships between meta data that comprises application data and context data as recited in Claim 1.

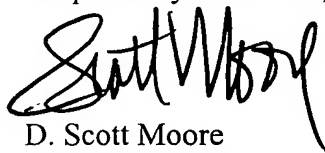
Accordingly, Applicant respectfully submits that the "retrieving, from the storage, application data that would be most appropriate for a current context of using the application based on the context data and the statistical information" recitation and the "determining statistical information associated with the meta data, the statistical information indicating relationships between the meta data" recitation of Claim 1 are not met by the combination of Kennedy and Kawasaki for at least the reasons discussed above. Applicant respectfully submits that similar recitations of independent Claims 22 and 44 are not met for at least the same reasons.

Furthermore, the Final Office Action fails to show proper motivation or suggestion to combine the cited references as suggested in the Final Office Action. In particular, Kawasaki relates to user profiling to target advertising to a user (Kawasaki, abstract) while

Kennedy relates to the auto completion of forms as described in the background of the present application. The Final Action has cited to no portion of Kennedy or Kawasaki that describe a problem with either that would be solved or benefit that would be obtained by combining the references. In fact, the cited portion of Kawasaki (col. 2, lines 35-45) appears to be describing the content preferences of a user, not application preferences. As such, Applicant submits that the combination of the references is not supported by the references themselves but is the type of conclusory assertion that has been rejected by the Federal Circuit as not being a proper basis for establishing a prima facie case of obviousness.

Accordingly, for at least the reasons discussed above, many of the recitations of Independent Claims 1, 22, and 44 are not met by the cited combination. Therefore, Applicant respectfully requests that the present application be reviewed and reversed by the appeal conference prior to the filing of an appeal brief.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. Scott Moore", is written over the printed name.

D. Scott Moore
Registration No. 42,011

USPTO Customer No. 46589
Myers Bigel Sibley & Sajovec
Post Office Box 37428
Raleigh, North Carolina 27627
Telephone: (919) 854-1400
Facsimile: (919) 854-1401